

Controlled Hazardous Substance Notification Workshop

November 10, 2009

Summary

1. How did the Maryland Department of the Environment (MDE) choose a 48-hour notification timeframe?

MDE reviewed other State's notification programs to see what notification timeframes were used. After considering the range of timeframes, from hours to days, MDE determined that 48 hours was probably the most reasonable.

2. How did MDE select its notification numbers?

MDE chose the U.S. Environmental Protection Agency's (USEPA) Region III Risk-based Criteria (RBCs) because they are peer reviewed. We also surveyed the notification standards used by others states, including Massachusetts, Nebraska, Kansas and Washington.

3. Does MDE have a document (it can share) summarizing the process it used to establish the reporting timeframe and notification numbers?

No.

4. Did MDE consider using the Maryland's soil and groundwater cleanup standards as the notification numbers?

No.

5. Does MDE have an estimate of how many notifications it expects to receive?

MDE does not have an estimate of the number of notifications it expects to receive as a result of the regulations. Based on research to date, the number may be somewhere between 25 and 125. The objective of the regulations is to prevent a repeat of Swann Park, that is, we want to find releases of concern that would not otherwise come to our attention through other reporting channels.

6. Would MDE consider using the term "potential responsible person" (PRP)" in the regulations instead of "RP"?

MDE appreciates the comment and will consider using the term "potentially responsible person."

7. Would MDE require a site, which has already notified, to re-notify if a new contaminant is discovered on the property later in the process?

No, MDE just wants to find new sites or new releases at sites already in our existing inventory.

8. Has MDE considered the un-intended consequences the new regulations could have on the regulated community (e.g., lenders not wanting to lend to sites awaiting MDE sign-off, owners not wanting to commit to the “prepared under my direction” clause, owners trying to decide if they need to report the findings of reports they didn’t commission, paperwork requirements, having to hire a consultant to prepare the report etc.)? MDE really needs to reconsider fiscal implications of the regulations and burden the current notification form places on small business owners.

MDE appreciates the comment and will consider whether the proposed regulation may have unintended consequences for the small business community.

9. How long will it take MDE to complete its notification reviews?

MDE does not know how long it will take to complete notification reviews at this time. It is believed that the length of time will be based on the amount of documentation provided with each notification.

10. Is MDE considering the use of “presumptive approvals”?

No.

11. Is MDE doing anything to address the problems or bad outcomes encountered in other States’ notification programs?

No.

12. Would sites applying chicken manure and/or sludge for agricultural purposes have to report? Arsenic is a known constituent of manure.

No, since these types of sites are reported to MDE by an existing permitting process.

13. If a person were to buy the property in Question 12 and find arsenic in the soil, would they have to report?

No.

14. Will MDE be creating a publicly available database of the notifications it receives?

Yes. MDE is considering incorporating the data into a GIS map with site locations and name, address, and notification date. At this time, MDE is not sure what would be included in the database. Implementation could take one or two years to complete.

15. If MDE creates a publicly-available database, it should include a current site “status” description.

MDE appreciates the comment and will consider incorporating such a designation into a site status field.

16. Does MDE see enforcement actions arising out of the notification process?

MDE does not know whether enforcement actions will arise out of the notification process at this time.

17. What if an owner has knowledge of a past release, but nothing documented in writing? Are they obliged to report?

MDE appreciates the comment and needs to give this further consideration.

18. Is MDE interested in finding on-going releases or just historical problems? Is MDE looking for the worst sites or trying to create an inventory of all contaminated properties in the State?

MDE is looking for sites where releases to the environment have created potential risks to human health.

19. Does notification pre-empt a site owner from entering the Voluntary Cleanup Program (VCP)?

No.

20. What about owners with huge property portfolios? Are they expected to go through all of their accumulated environmental records for every property looking for releases? Do they need to do that for properties that were in their portfolio, but have long since been sold?

MDE appreciates the comment and needs to give this further consideration.

21. Has MDE considered the use of “presumptive areas” (e.g., areas of Baltimore City with PAHs in soil due to the “Great Fire”, etc.)?

No.

22. Could release notification trigger requirements for VCP or CHS Enforcement participation that an owner has no interest in getting involved with?

Yes.

23. Has MDE considered the quality of the data some notifications may have to rely on? For example, you have a PCE hit in data collected from a soil boring 15 years ago, you need to report this?

MDE appreciates the comment and needs to give this further consideration.

24. How much will MDE's notification review process hold up property transactions?

MDE does not know whether the notification process will delay property transactions.

25. Can private entities do pre-emptive risk assessments to see if they need to report?

No. Requirement to report is based on exceeding specific notification numbers.

26. What about entities with numerous properties, will they be able to file a "place holder" letter with MDE outlining a schedule for completing its notification requirements?

MDE appreciates the comment and needs to give this further consideration.

27. Will MDE have the staff and resources it needs to respond to the notification submissions?

There are no plans for increasing our staff and resources in the near term.

28. How does the notification NFA MDE is proposing differ from the NFR letter it currently issues? Don't the extensive requirements of MDE's notification form over-reach the statute?

MDE appreciates the comment and needs to give these issues further consideration?

29. What does MDE have in mind for its notification review process?

MDE will acknowledge initial receipt of the notification form. If additional assessment is required, MDE will inform the person that he or she can complete the site-related activities under either the VCP or CHS Enforcement Division.

30. How will MDE determine if an impacted site goes to VCP or CHS Enforcement?

The reporting entity will have to make this decision.

31. Are federal, State and local entities exempt from the notification requirements?

MDE will have to determine this on a case-by-case basis.

32. How do property owners find "the nearest well"?

Submit a Public Information Act request to MDE to perform a well search.

33. Will MDE charge people for making false spill accusations against property owners/operators?

This decision is an enforcement decision to be made on a case-by-case basis.

34. Can MDE post its well database on its website to give persons submitting a notification the ability to conduct their own well searches?

While the Land Restoration Program will investigate whether such information can be made more easily available to the public, it is LRP's understanding that public access to this data is very limited

35. Will entities using pesticides and other chemicals for and in accordance with the intended uses be required to notify MDE?

No, as this is one of the exemptions provided for under the CHS Statute and the regulations.

36. Will revisions made as a result of today's meeting be re-published for another round of comment?

MDE will consult with the Office of Attorney General on this issue.

37. Would MDE consider forming a work group to help with revising the draft regulations?

MDE appreciates the comment and will consider submitting the draft regulations to the Controlled Hazardous Substance Advisory Council for comments.

38. Who is ultimately responsible for filing the notification form (buyer, seller, etc.)?

MDE believes that this issue has to be resolved between the buyer and seller.

39. What if a property transaction falls through and the prospective purchaser vindictively notifies MDE of contamination detected during the due diligence period?

MDE will contact the responsible person (RP).

40. Would abandoned containers on a property trigger the notification process?

Under existing federal and state laws and regulations, abandoned containers on a property can result in notifications from the general public.

41. More than one pound of friable asbestos on a property triggers the notification process?

Yes. The release of one pound or more of friable asbestos into the environment is considered a release of a hazardous substance.

42. Will there be an exemption for naturally-occurring metals?

MDE will make this determination on a case-by-case basis.

43. Will the questions raised during this meeting be posted on MDE's website?

Yes.

44. Are lead-based paint and ACM exempt from the notification requirements?

MDE appreciates the question and believes it requires more extensive consideration.

45. Did MDE consider using CERCLA reportable quantities to develop its notification requirements?

No. The CERCLA reportable quantity levels are based on the assumption that a release has occurred into the environment over a 24-hour period. The notification requirements are based on the premise that a release of hazardous substances into the environment has occurred over a period of time and represent a long-term risk to human health and the environment.

46. How will the notification regulations account for regular updates to the EPA RBCs?

The regulations are currently written with reference to the April 2009 RBC values. The only way for MDE address future RBC revisions will be to re-propose the regulations. This can be done, but will mean periods of time where the regulations will not reference the most current version of the RBCs.

Wrap-Up

- Horacio Tablada, the director of the Land Management Administration, concluded the meeting by stating that the attendees expressed concern with the notification form. He added that MDE would like input from the meeting participants on how to correct these problems as the form can be changed. He also noted that MDE is accepting comments until November 23, 2009. Mr. Tablada concluded the meeting by stating that MDE has the ability to withdraw and re-propose the regulations if necessary.